Nebraska Law Review

Volume 33 | Issue 1 Article 11

1953

Recent Cases: Bills and Notes — Intentional Destruction of Negotiable Instrument by Holder as Cancellation of Debt

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Bills and Notes—Intentional Destruction of Negotiable Instrument By Holder as Cancellation of Debt

The holder of overdue bonds, upon advice from her financial adviser, destroyed the bonds under the belief that they were valueless. Ten years later the bonds were included in a reorganization plan and became valuable. The holder sued to recover the value of the bonds. *Held:* voluntary destruction of the bonds canceled and discharged the bonds under the Negotiable Instruments Law and also the obligation thereon;[1] thus, recovery denied.[2]

An analysis of this case requires that it be determined whether voluntary destruction of an instrument constitutes a mode of cancellation under sections 119 and 123 of the N.I.L.,[3] so as to discharge the obligation.

[1] Okla. Stat. Ann. tit. 48, §§ 261(3), 265 (1951).

[2] State Street Trust Co. v. Muskogee Electric Traction Co., 204 F.2d 920 (10th Cir. 1953).

[3] Uniform Negotiable Instruments Law § 119: "A negotiable instrument is discharged: ... (3) By the intentional cancellation thereof by the holder." Uniform Negotiable Instruments Law § 123: "A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the can-

It is well settled, in cases both before and after the adoption of the N.I.L., that the holder of a negotiable instrument who intentionally destroys his instrument with the intention of cancelling the obligation discharges the obligation.[4]

Before the N.I.L., where there was a voluntary destruction of the instrument, it was held to be cancellation of the instrument and the obligation, even though no intent to forgive the obligation was manifested or made an issue in the case.[5] The reason generally stated for precluding recovery was the prevention of fraud.[6]

It has been held under sections 119 and 123 of the N.I.L. that voluntary destruction of three promissory notes worked a cancellation of the instruments but not necessarily of the obligations thereon.[7] Also, cancellation by mutilation must be accompanied by an intent to cancel the obligation, and such intent is an essential element to its discharge.[8]

Distinguishing cancellation of the instrument and cancellation of the obligation,[9] where no intent to cancel can be shown, seems sound since cancellation of the instrument may be inoperative because of error or mistake, under the wording of section 123.[10]

Although the possibility of fraud has been said to be the crux of the rationale for denying recovery in intentional destruction cases, where notes,[11] letters,[12] contracts [13] and deeds[14] have been destroyed by mistake or through the ordinary course of business, the generally accepted rule of evidence is to permit secondary evidence to be introduced to prove the contents of the destroyed paper, provided that the

cellation was made unintentionally, or under a mistake or without authority."

[4] Wilkins v. Skoglund, 127 Neb. 589, 256 N.W. 31 (1934); Norton v. Smith, 136 Me. 58, 153 Atl. 886 (1931); Manker v. Manker, 249 Ill. App. 161 (1928); McDonald v. Loomis, 233 Mich. 174, 206 N.W. 348 (1925); Hensen v. Hensen, 151 Tenn. 137, 268 S.W. 378 (1925); Jones Adm'rs v. Coleman, 121 Va. 86, 92 S.E. 910 (1917); Sullivan v. Shea, 32 Cal. App. 369, 162 Pac. 925 (1916); Montgomery v. Schwald, 177 Mo. App. 75, 166 S.W. 831 (1914); Conner v. Martin, 46 Ind. App. 141, 92 N.E. 3 (1910); Kester v. Kester, 38 Ore. 10, 63 Pac. 635 (1900); Larkin v. Hardinbrook, 90 N.Y. 333 (1882); Darland v. Taylor, 52 Iowa 503, 3 N.W. 510 (1879); Licey v. Licey, 7 Pa. 251 (1848).

[5] Booth v. Smith, 3 Fed. Cas. 888, No. 1649 (C.C.D.La. 1876); Vanauken v. Hornbeck, 14 N.J.L. 179 (Sup. Ct. 1833).

[6] Vanauken v. Hornbeck, 14 N.J.L. 179 (Sup. Ct. 1833).

[7] Greene v. Poz, 182 N.Y. Supp. 900 (1st Dep't 1920).

[8] In re Lock's Will, 187 Misc. 535, 64 N.Y.S.2d 206 (Surr. Ct. 1946).

[9] First Nat. Bank of Wellston v. Patton Co., 32 Ohio Dec. 627 (1910).

[10] Broad and Market Nat. Bank of Newark v. New York and Eastern Realty Co., 102 Misc. 82, 168 N.Y. Supp. 149 (2d Dep't 1917).

[11] Bagley v. McMickle, 9 Cal. 430 (1858) (negotiable instrument); Blade v. Noland, 12 Wend. 173 (N.Y. 1834) (court presumed notes to be non-negotiable in absence of contrary proof).

[12] Dearing v. Pearson, 8 Misc. 269, 28 N.Y. Supp. 715 (N.Y. C.P. 1894); Tobin v. Shaw, 45 Me. 331 (1858).

[13] Davis v. Teachout's Estate, 126 Mich. 135, 85 N.W. 475 (1901); Riggs v. Tayloe, 9 Wheat. 480 (U.S. 1824).

[14] Blake v. Fash, 44 Ill. 302 (1867).

one introducing such evidence can first remove, to the satisfaction of the court, any suspicion of fraud.[15]

This rule gives the holder a means of overcoming the presumption of fraud in his act of destruction. Further, it affords an opportunity to present proof of the circumstances surrounding his actions and, thus, would satisfy the requirements of section 123 regarding burden of proof. An application of this rule to the facts of the instant case could have caused judgment to be rendered in favor of the holder, provided that she could have satisfactorily dispelled the presumption of fraud arising from her act of destruction.

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[15] Bagley v. McMickle, 9 Cal. 430 (1858); 4 Wigmore, Evidence § 1198 (3d ed. 1940) (collection of cases by jurisdiction); Model Code of Evidence, Rule 602 (1942).